KEY FACTS
FOUNDATIONS

A KEY ATTRACTION OF THE JERSEY FOUNDATION IS THAT AS PART OF ITS DEVELOPMENT IT WAS INTENDED TO HAVE THE BENEFITS OF A COMBINATION OF KEY JURISDICTIONS' FOUNDATION LEGISLATION WHILST NOT BEING AN EXACT EQUIVALENT. ADDITIONALLY, THE JERSEY FOUNDATION OFFERS THE FLEXIBILITY OF THE BEST ELEMENTS OF THE MORE TRADITIONAL COMPANIES AND TRUSTS.

The concept of a Jersey foundation combines many aspects of both a trust and a body corporate, and since its inception has provided many uses for offshore planning, as well as being of particular interest and appeal to planners from civil law jurisdictions already familiar with foundations.

Since its introduction, Jersey has also seen the migration of many foundations domiciled in jurisdictions such as Liechtenstein and Panama or a merger of them with Jersey foundations.

FEATURES OF A JERSEY FOUNDATION

> A Jersey foundation is a body corporate registered with the Registrar of Companies and is governed by the Law, its charter and its regulations (if any).

> **Name** – A foundation's name must end in the word "foundation" or an equivalent translation into a foreign language.

> **Charter** – All foundations have a charter. The charter is a public document which sets out the name and objectives of the foundation. The detailed provisions applicable to the foundation can be included in the public charter or in the regulations, which is a private document, although the government of Jersey plans to introduce amendments to the Law, requiring the filing of an abridged version of the foundation's regulations. (The charter, or any part of it, may be in any language. However, it is important to note that a translation in English must be provided at the time the proposed charter is submitted to the Companies Registry.)

> **Registration** – The charter must be lodged with the registrar on incorporation, and must specify
> > the name of the foundation
> > the objectives for which the foundation was established (which can be charitable, non-charitable or both, and can be for the benefit of people, purposes or both)
> > the names and addresses of the first members of the foundation's council
> > the details of any initial endowment
> > what will happen to foundation assets should the foundation be wound up and dissolved
> > details of the event or time, such as the happening of an event or the expiration of a fixed period of time, to cause the foundation to be wound up and dissolved

> **Regulations** – The regulations set out how the foundation's assets are to be administered and how its objectives are to be achieved. Since the introduction of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 abridged versions of the foundation's regulations, are required to be filed with the registrar, and are publicly available, although any information that can or may identify a person does not have to be included in the abridged regulations.

> **Founder** – The person or entity instigating the Jersey foundation is the founder. The founder instructs the qualified person to apply for the incorporation. The founder need not be the same person who provides any endowment or financial contributions. The identity of the founder need not be disclosed. If disclosed, founder's rights may be reserved to the founder by appropriate provisions in the charter and regulations.

TRIDENT TRUST COMPANY LIMITED IS REGULATED BY THE JERSEY FINANCIAL SERVICES COMMISSION.
TRIDENT TRUST © NOVEMBER 2023.

> **Guardian** – A Jersey foundation must have a guardian whose function is to ensure that the council carries out its functions and administers the foundation's assets in accordance with the objectives of the foundation. Additionally, the role of guardian may be carried out by the founder or the qualified person, but no other council member can be the guardian.

> **Council** – A foundation is required to have a council that is the body responsible for fulfilling the aims of the foundation in accordance with the Law, charter and regulations. The council must have at least one "qualified" member (a person registered with and regulated by the Jersey Financial Services Commission to carry on trust company business; Trident Trust Company Ltd is registered to conduct these activities) and must also have a guardian to oversee the work of the council and to whom the council are accountable.

> **Beneficiaries** – A foundation need not have beneficiaries. If there are beneficiaries, they have no interest in the foundation's assets and beneficiaries are not owed fiduciary duties by the foundation or the council members. Unless required by the charter or regulations a foundation is not required to provide any person (including a beneficiary) with any information about the foundation or its administration.

> A Jersey foundation has a separate corporate personality but unlike a company it has no shareholders. It can sue and be sued in its own name and enter contracts in its own name. Like a company, the regulations provide for most commercial transactions which a company can undertake such as winding up, dissolution, merger with other foundations or corporate bodies and migration from the Island to other jurisdictions. The regulations may also set out the functions that may be delegated by the council.

> No initial endowment – Unlike a trust, there is no requirement for an initial endowment to initiate its existence.

> A Jersey foundation cannot itself trade other than trading activities which are incidental to the attainment of its objectives. (It can own interests in underlying trading entities.)

> A Jersey foundation can hold foreign property, but cannot own property located in Jersey.

> A Jersey foundation can have any objectives (including charitable or non-charitable objectives, defined purposes or to benefit beneficiaries) provided they are lawful.

> There are no Jersey income or capital taxes for non-resident taxpayers.

> There are certain administrative requirements such as having a business address in Jersey, and ensuring the name and business address of the foundation appear on written communications. Statutory and financial books and records must be maintained at the business address. The business address will be the address of the locally regulated council member.

> Migration and merger – Re-domiciliation, continuance and merger provisions are similar to companies.

> The council of members must make sure that a foundation's records are kept and prepared properly and are accurate.

PUBLICLY AVAILABLE INFORMATION

As with other Jersey incorporated or registered entities, certain information is required to be filed and kept updated with the registrar, including the following:

> Details of significant persons, such as members of the council (which will be available for public inspection), including (subject to limited exceptions) name, correspondence address, residential address, nationality, occupation, gender, date of birth, and place and country of birth

> Details of the nominated person who has been appointed to act as the foundation's appointed liaison with the registry

> An annual confirmation statement pursuant to the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020, with the filing due by the end of February each year (this is a requirement for Jersey registered entities and will include all information noted above as well as other information as required)

FLEXIBLE APPLICATIONS

> **"Corporate-like"** – A Jersey foundation could be said to resemble a company by reason of its incorporation and registration; its constitution being similar to memorandum and articles of association; the council members being akin to a board of directors; indefinite duration; and flexibility as regards provisions to cover such corporate actions such as re-domiciliation, continuance, merger, dissolution and winding up.

> **"Trust-like"** – A Jersey foundation could also be said to resemble a trust in many aspects. The founder may resemble a "Settlor" (perhaps with certain powers reserved to him or her) who makes an endowment (settlement) for the benefit of beneficiaries who cannot own the assets, but for whom the assets can be administered for their present or ultimate benefit. Alternatively the founder may remain anonymous, thereby resembling a "declaration of trust". The charter and regulations may in many respects resemble a discretionary or fixed interest trust instrument. The Jersey foundation may also be created by will or other testamentary writing. The guardian is similar to a protector.

> **Charitable or Commercial Purposes** – The Jersey foundation may be established for purposes broadly "charitable" (e.g., cultural, philanthropic, scientific, educational, humanitarian or religious purposes) or "commercial" (non-trading purposes) in the same manner that a "purpose trust" and underlying companies may be applied (e.g., the holding of entities to carry out licensing of intellectual property, leasing, provision of benefits to incentivise employees or the holding of SPVs for capital market and financial structuring, etc.). A Jersey foundation may be used instead of a non-charitable purpose trust to hold the shares of a Private Trust Company (PTC), which is set up to act as trustee for one or more family trusts, with the board of directors of the PTC comprising certain family members.

TYPICAL USES OF A FOUNDATION

> To act as a holding or investment vehicle to own and/or invest in shares, interests and stocks of private companies or other securities

> To assist private individuals with global asset management

> To deal with succession and inheritance planning and wealth preservation

> To avoid probate requirements and forced heirship in certain countries

> To protect persons at a disadvantage due to minority or incapacity who cannot manage their assets or risk losing the same

> To protect against fragmentation and outsiders gaining control of family businesses which are passed down through the generations

> Asset protection

FIND OUT MORE

If you would like to discuss any aspects of the above in more detail, please contact your usual Trident representative or email Trident Jersey directly at jersey@tridenttrust.com.

- PEOPLE LED
- TECH ENABLED
- GLOBAL COVERAGE
- TAILORED SERVICE
- 1,100 STAFF
- 25 JURISDICTIONS
- 47,000 ENTITIES
- $177BN AUA
- FUNDS
- PRIVATE CLIENTS
- CORPORATE CLIENTS
- MARITIME

TRIDENTTRUST.COM